

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

---

DAVID McCHESNEY,

Plaintiff,

v.

9:10-CV-1409  
(GTS/DEP)

SAMUEL BASTIEN, IV, Chief Executive Officer  
of the St. Lawrence Psychiatric Center,

Defendant.

---

APPEARANCES:

OF COUNSEL:

DAVID McCHESNEY, 06-A-3298  
Plaintiff, *Pro Se*  
Central New York Psychiatric Center  
P.O. Box 300  
Marcy, New York 13403-0300

HON. ERIC T. SCHNEIDERMAN  
Attorney General for the State of New York  
Counsel for Defendant  
The Capitol  
Albany, New York 12224

MICHAEL G. McCARTIN, ESQ.  
Assistant Attorney General

GLENN T. SUDDABY, United States District Judge

**DECISION and ORDER**

Currently before the Court in this *pro se* prisoner civil rights action filed by David McChesney (“Plaintiff”) against Samuel Bastien, IV (“Defendant”), are (1) Defendant’s unopposed second motion for summary judgment based on the qualified-immunity defense (Dkt. No. 18), and (2) United States Magistrate Judge David E. Peebles’ Report-Recommendation recommending that Defendant’s second motion for summary judgment be granted (Dkt. No. 20). Plaintiff has not filed an Objection to the Report-Recommendation, and the time in which to do so has expired. After carefully reviewing all of the papers herein, including Magistrate Judge

Peebles' thorough Report-Recommendation, the Court can find no clear error in the Report-Recommendation. The Court adds only the following two brief points.

First, because this Decision and Order is intended primarily for the review of the parties, the Court incorporates by reference the relevant procedural history, standard of review, summary judgment standard, qualified-immunity legal standard, and qualified-immunity analysis set forth in the Court's Decision and Order of September 20, 2012 (Dkt. No. 17, at Parts I, II.A., II.B., II.C., and III.B). The Court also incorporates by reference the statement of facts and qualified-immunity analysis set forth in Magistrate Judge Peebles' Report-Recommendation of June 28, 2013 (Dkt. No. 20, at Parts I and III.B.2).

Second, a defendant's burden on an unopposed motion is lightened such that, in order to succeed on that motion, that defendant need only show the facial merit of his argument. (Dkt. No. 17, at Part II.B.) Moreover, when no objection is filed to a report-recommendation, a magistrate judge's finding that a defendant's argument possesses facial merit need only be free of clear error. (Dkt. No. 17, at Part II.A.) Here, the Court finds that such a finding is free of clear error, for the reasons stated on Magistrate Judge Peebles' Report-Recommendation of June 28, 2013 (including his findings regarding the complexity of the relevant legal issues, the reasonableness of Defendant's reliance on the advice of counsel, the expeditious nature of the Office of Mental Health's review of Plaintiff's case, and Defendant's belief that Plaintiff wanted to remain at the Psychiatric Center, during the time in question). (*See* Dkt. No. 20, at Part III.B.2.)

For all of these reasons, the Report-Recommendation is accepted and adopted in its entirety, Defendant's second motion for summary judgment is granted, and Plaintiff's Complaint is dismissed in its entirety.

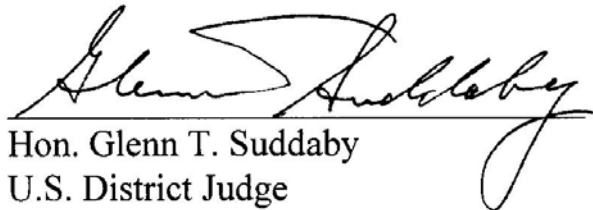
**ACCORDINGLY**, it is

**ORDERED** that Magistrate Judge Peebles' Report-Recommendation of June 28, 2013 (Dkt. No. 20) is **ACCEPTED** and **ADOPTED** in its entirety; and it is further

**ORDERED** that Defendant's second motion for summary judgment (Dkt. No. 18) is **GRANTED**; and it is further

**ORDERED** that Plaintiff's Complaint (Dkt. No. 1) is **DISMISSED** in its entirety.

Dated: August 22, 2013  
Syracuse, New York



Hon. Glenn T. Suddaby  
U.S. District Judge